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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

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6 NATHAN ECHEVERRIA, *et al.*,

Case No. 3:14-cv-00320-MMD-WGC

7 Plaintiffs,

ORDER

8 v.

9 STATE OF NEVADA, *et al.*,

10 Defendants.

11 **I. SUMMARY**

12 Plaintiffs, who are guards and other employees at correctional facilities, sued the
13 State of Nevada, *ex rel.* the Nevada Department of Corrections (“NDOC”) in this
14 collective action brought under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*
15 (“FLSA”) to recover compensation for time spent allegedly preparing for, or wrapping up,
16 their work shifts. (ECF No. 95.) Before the Court is Plaintiffs’ motion to voluntarily
17 dismiss certain opt-in Plaintiffs who only worked at NDOC conservation camps and
18 transitional housing facilities, along with any claims based on time worked at those
19 locations, under Fed. R. Civ. P. 41(a)(2) (“Motion”).¹ (ECF No. 251.) As further explained
20 below, because the Court should grant a motion for voluntary dismissal unless a
21 defendant can show it will suffer some legal prejudice from the dismissal, and NDOC has
22 not made a sufficient showing of legal prejudice, the Court will grant the Motion.

23 **II. BACKGROUND**

24 The Court again refers to one of its prior orders in which it recited the factual
25 background of this case, and does not recite those facts here. (ECF No. 166 at 2-5.)
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28 ¹NDOC responded in opposition to the Motion (ECF No. 255 (“Response”)), and Plaintiffs replied (ECF No. 261).

1 As relevant to Plaintiffs' Motion, Plaintiffs propose dividing NDOC facilities into
2 two groups. (ECF No. 251 at 2.) The "Dismissal Facilities" consist of NDOC conservation
3 camps and transitional housing facilities.² (*Id.*) The "Remaining Facilities" consist of
4 NDOC prisons.³ (*Id.*) The Court adopts this naming scheme for ease of reference.

5 Plaintiffs seek to dismiss all of the Dismissal Facilities and the five opt-in Plaintiffs
6 who only worked there from this collective action—without prejudice. (*Id.* at 1-3.)
7 Plaintiffs explain that they realized NDOC employees at the Dismissal Facilities were not
8 required to do the "same pre- and post-shift off the clock reporting for duty and receiving
9 of assignments as the employees assigned to the regular prisons" following site visits to
10 some of the facilities. (*Id.* at 3.) Specifically, Plaintiffs' counsel realized at these site visits
11 that the Dismissal Facilities have a different layout than the Remaining Facilities. (*Id.* at
12 9.) "This difference led to the conclusion that it would be unwise for Plaintiffs to spend
13 court time and resources litigating the pre-shift off the clock issues at" the Dismissal
14 Facilities, "when this group added so little to the amount of damages due to employees
15 and when collective facts were different from the" Remaining Facilities. (*Id.*)

16 This is the third time Plaintiffs have filed some version of the Motion. (ECF Nos.
17 129, 198, 251.) Plaintiffs first filed the Motion not as a motion, but as a notice. (ECF No.
18 129.) As that was procedurally improper, the Court granted (ECF No. 192) NDOC's
19 motion to strike the notice (ECF No. 136). Plaintiffs then filed a motion. (ECF No. 198.)
20 The Court denied this motion the second time when it stayed the case pending the
21 outcome of NDOC's appeal, without prejudice to refiling once the Ninth Circuit resolved
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23 ²They are the: "(1) Carlin Conservation Camps; (2) Ely Conservation Camp; (3)
24 Humboldt Conservation Camp; (4) Jean Conservation Camp; (5) Pioche Conservation
25 Camp; (6) Silver Springs Conservation Camp; (7) Stewart Conservation Camp; (8) Three
26 Lakes Valley Boot Camp; (9) Three Lakes Valley Conservation Camp; (10) Tonopah
Conservation Camp; (11) Wells Conservation Camp; (12) Casa Grande Transitional
Housing; and (13) Northern Nevada Transitional Housing." (ECF No. 251 at 2.)

27 ³They are the: "(1) Ely State Prison, (2) Florence McClure Women's Correctional
28 Center, (3) High Desert State Prison, (4) Lovelock Correctional Center, (5) Northern
Nevada Correctional Center, (6) Southern Desert Correctional Center, and (7) Warm
Springs Correction Center." (ECF No. 251 at 2.)

1 the appeal. (ECF No. 215.) This case was stayed for some time during that appeal. (ECF
2 Nos. 215 (staying the case), 243 (lifting the stay).) Plaintiffs then filed the Motion after
3 the Court lifted the stay. (ECF No. 251.) Thus, while the site visits occurred in the fall of
4 2017 (*Id.* at 5), the Motion is now before the Court to consider on its merits for the first
5 time.

6 **III. LEGAL STANDARD**

7 “A district court should grant a motion for voluntary dismissal under Rule 41(a)(2)
8 unless a defendant can show that it will suffer some plain legal prejudice as a result.”
9 *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001) (footnote and citation omitted); see
10 also *Watson v. Clark*, 716 F. Supp. 1354, 1355 (D. Nev. 1989), *aff’d*, 909 F.2d 1490 (9th
11 Cir. 1990) (citation omitted). (“Generally, motions filed under Fed. R. Civ. P. 41(a)(2)
12 should be liberally granted, as long as no other party is prejudiced.”). Whether to grant a
13 Rule 41(a)(2) motion is committed to the district court’s discretion.⁴ See *Watson*, 716 F.
14 Supp. at 1355. While the Court must consider whether the defendant will suffer some
15 plain legal prejudice as a result of the dismissal, plain legal prejudice does not result
16 simply when the plaintiff “merely gains some tactical advantage.” *Id.* (citation omitted).
17 “Plain legal prejudice may be shown where actual legal rights are threatened or where
18 monetary or other burdens appear to be extreme or unreasonable.” *Id.* at 1355-56
19 (citation omitted). Said otherwise, “legal prejudice is just that—prejudice to some legal
20 interest, some legal claim, some legal argument.” *Westlands Water Dist. v. United*
21 *States*, 100 F.3d 94, 97 (9th Cir. 1996).

22 **IV. DISCUSSION**

23 The Court will grant the Motion primarily because NDOC has not shown plain
24 legal prejudice in its Response—instead, NDOC argues prejudice divisible into
25 categories the Ninth Circuit has found not to constitute legal prejudice. For example,
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27 ⁴Further, the Court conducts all of its analyses under the Federal Rules of Civil
28 Procedure in line with the mandate in Rule 1 providing that “[t]hey should be construed,
administered, and employed by the court and the parties to secure the just, speedy, and
inexpensive determination of every action and proceeding.” Fed. R. Civ. P. 1.

1 NDOC argues that Plaintiffs' Motion "reflects an intentional strategy decision intended to
2 obstruct NDOC's defense of this litigation." (ECF No. 255 at 13 (emphasis omitted).) But
3 any tactical advantage Plaintiffs may gain in being permitted to voluntarily dismiss
4 certain claims and plaintiffs does not legally prejudice NDOC. *See, e.g., Watson*, 716 F.
5 Supp. at 1355 (stating in the Rule 41 context that legal prejudice does not result simply
6 when the plaintiff "merely gains some tactical advantage.") NDOC also argues that
7 Plaintiffs have been dilatory in bringing their Motion. (ECF No. 255 at 11-13.) The Court
8 disagrees. Especially given the lengthy stay the Court granted at NDOC's request, the
9 Court finds that Plaintiffs "could have sought dismissal sooner than they did, but they
10 were not dilatory." *Westlands*, 100 F.3d at 97. In addition, NDOC argues that they have
11 incurred expenses defending this suit based on the understanding that the Dismissal
12 Facilities were part of it. (ECF No. 255 at 13-15.) But the Ninth Circuit has "explicitly
13 stated that the expense incurred in defending against a lawsuit does not amount to legal
14 prejudice." *Westlands*, 100 F.3d at 97 (citation omitted).

15 Much of NDOC's argument in its Response is devoted to the problem created by
16 what it calls "hybrid claims," or claims brought by people who worked at both the
17 Dismissal Facilities and the Remaining Facilities. (ECF No. 255 at 10-11, 16-17.)
18 However, the Court finds Plaintiffs' explanation in their reply persuasive—that "Plaintiffs'
19 Motion simply narrows the universe of time upon which a damages calculation will be
20 made based on the location the work was performed, *i.e.* at one of the prison facilities
21 where the evidence clearly shows the pre- and post-shift reporting for duty and receiving
22 of assignments was the same." (ECF No. 261 at 6.) The Court construes this as a
23 concession on Plaintiffs' part that they will only seek recovery for time spent working at
24 Remaining Facilities. (*Id.* ("Any damage calculation will be based on how long the
25 correctional officer worked at one or more of the seven (7) prison facilities within the
26 class/limitations period.")) So construed, there is no such thing as a "hybrid claim."
27 Thus, the Court finds NDOC's "hybrid claim" argument unpersuasive. (ECF No. 255 at
28 10-11, 16-17.)

1 The Court is conversely persuaded by Plaintiffs' basic argument that dropping the
2 Dismissal Facilities—along with any claims based thereon, and plaintiffs who only
3 worked at those facilities—will narrow the range of issues for trial. (ECF No. 251 at 9.)
4 This argument lines up with Rule 1's mandate to secure a just and speedy resolution to
5 this matter. Moreover, while this case has been pending for some six years, it is now
6 inching towards dispositive motion practice and trial. Thus, this is a good time to simplify
7 this case. In sum, the Court will grant the Motion both because doing so will streamline
8 the issues for trial, and because NDOC has not persuaded the Court it will suffer any
9 plain legal prejudice—as opposed to prejudice in the more general sense—if the Court
10 grants the Motion.

11 But that still leaves one additional matter for resolution. NDOC asked the Court to
12 condition voluntary dismissal on payment of NDOC's attorneys' fees and costs in the
13 event it were to grant the Motion. (ECF No. 255 at 14, 19.) However, "[i]mposition of
14 costs and fees as a condition for dismissing without prejudice is not mandatory[.]"
15 *Westlands*, 100 F.3d at 97 (citation omitted). Moreover, Rule 41(a)(2) does not provide
16 the Court with an independent base of authority for sanctioning lawyers. *See Heckethorn*
17 *v. Sunan Corp.*, 992 F.2d 240, 242 (9th Cir. 1993). NDOC has not filed a Rule 11 motion,
18 much less appealed to the Court's inherent or statutory powers allowing it to impose
19 sanctions, or presented any evidence in its Response convincing the Court that Plaintiffs
20 acted in bad faith in filing their Motion. (ECF No. 255.) Moreover, the Court is
21 unpersuaded NDOC has spent time and money on discovery regarding the Dismissal
22 Facilities that cannot be used as this case moves forward. *See Westlands*, 100 F.3d at
23 97 ("[I]f the district court decides it should condition dismissal on the payment of costs
24 and attorney fees, the defendants should only be awarded attorney fees for work which
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1 cannot be used in any future litigation of these claims.”). The Court therefore declines to
2 condition this voluntary dismissal on Plaintiffs’ paying NDOC’s attorneys’ fees.⁵

3 **V. CONCLUSION**

4 The Court notes that the parties made several arguments and cited to several
5 cases not discussed above. The Court has reviewed these arguments and cases and
6 determines that they do not warrant discussion as they do not affect the outcome of the
7 Motion before the Court.

8 It is therefore ordered that Plaintiffs’ motion for voluntary dismissal (ECF No. 251)
9 is granted.

10 It is further ordered that any and all claims based on work performed at the
11 Dismissal Facilities (as defined *supra* at 2 n.1), along with any Plaintiffs who only worked
12 at the Dismissal Facilities, are dismissed from this action without prejudice.

13 DATED THIS 1st day of April 2020.

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16 MIRANDA M. DU
17 CHIEF UNITED STATES DISTRICT JUDGE
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25 ⁵Somewhat similarly, Plaintiffs offered to make their expert Mr. Steiner available
26 to NDOC for further deposition—limited in time and scope to supplements he made to an
27 expert report assuming that the Court would dismiss the Dismissal Facilities—in the
28 event the Court denied the Motion. (ECF No. 261 at 4-5.) As explained *supra*, the Court
will grant the Motion. Nonetheless, as Plaintiffs have offered to make him available,
NDOC may depose Mr. Steiner again—provided that deposition is limited in scope to the
supplements he made to his initial report. Discovery remains closed in this case in all
other respects.